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Attorneys for Defendants SANTA CLARA
 COUNTY DISTRICT ATTORNEY
 GEORGE KENNEDY AND SANTA
 CLARA COUNTY COUNSEL ANN
 MILLER RAVEL, IN THEIR OFFICIAL
 CAPACITIES

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIDEO SOFTWARE DEALERS)	No. C05-4188 RMW (RS)
ASSOCIATION and ENTERTAINMENT)	
SOFTWARE ASSOCIATION,)	
)	ANSWER BY DEFENDANTS SANTA
Plaintiffs,)	CLARA COUNTY DISTRICT
)	ATTORNEY GEORGE KENNEDY
v.)	AND COUNTY COUNSEL ANN
)	MILLER RAVEL TO COMPLAINT

ARNOLD SCHWARZENEGGER, in
 his official capacity as Governor of the,
 State of California; BILL LOCKYER,
 in his official capacity as Attorney
 General of the State of California;
 GEORGE KENNEDY, in his official
 capacity as Santa Clara County District
 Attorney, RICHARD DOYLE, in his
 official capacity as City Attorney for
 the City of San Jose, and ANN MILLER
 RAVEL, in her official capacity as
 County Counsel for the County of
 Santa Clara,

Defendants.

Defendants Santa Clara County District Attorney George Kennedy and County Counsel
 Ann Ravel hereby answer the Complaint ("Complaint") of plaintiffs on file herein and admit,
 deny, and allege as follows:

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1 Answering the allegations of paragraph 1 of the Complaint, these answering defendants
2 have insufficient information or belief to enable them to respond and basing their denial on that
3 ground, deny each and every, all and singular, generally and specifically, said allegations.

4 Answering the allegations of paragraph 2 of the Complaint, these answering defendants
5 admit, based on information or belief, the first and last sentences of the paragraph. Other
6 allegations inaccurately or incompletely portray the Act; these answering defendants deny each
7 and every, all and singular, generally and specifically, allegations other than those in the first and
8 last sentences of the paragraph.

9 Answering the allegations of paragraph 3 of the Complaint, these answering defendants
10 deny each and every, all and singular, generally and specifically, said allegations.

11 Answering the allegations of paragraph 4 of the Complaint, these answering defendants
12 admit that the court decisions cited exist but contend that plaintiffs have not accurately
13 characterized them. As such, defendants deny each and every, all and singular, generally and
14 specifically, said allegations.

15 Answering the allegations of paragraph 5 of the Complaint, these answering defendants
16 admit that the Act does include a labeling requirement as to certain covered video games. As to
17 the remaining allegations in paragraph 5, defendants deny each and every, all and singular,
18 generally and specifically, said allegations.

19 Answering the allegations of paragraph 6 of the Complaint, these answering defendants
20 have insufficient information or belief as to the plaintiffs' membership to respond to allegations
21 regarding their situation and on that basis deny each and every, all and singular, generally and
22 specifically, said allegations. Defendants deny each and every, all and singular, generally and
23 specifically, said remaining allegations.

24 Answering the allegations of paragraph 7 of the Complaint, these answering defendants
25 deny each and every, all and singular, generally and specifically, said allegations.

26 Answering the allegations of paragraph 8 of the Complaint, these answering defendants
27 admit that the complaint states that the action is brought against these defendants in their official
28 capacities. Defendants deny each and every, all and singular, generally and specifically, the

1 remaining allegations.

2 Answering the allegations of paragraph 9 of the Complaint, these answering defendants
3 respond that the personal residences of officials sued in their official capacities are confidential
4 and/or irrelevant to jurisdiction. Defendants have insufficient information or belief to respond
5 to the allegations regarding plaintiffs' members to respond. Defendants deny each and every, all
6 and singular, generally and specifically, said allegations.

7 Answering the allegations of paragraph 10 of the Complaint, these answering defendants
8 deny each and every, all and singular, generally and specifically, said allegations.

9 Answering the allegations of paragraph 11 of the Complaint, these answering defendants
10 lack information or belief as to said allegations and on that basis, deny each and every, all and
11 singular, generally and specifically, said allegations.

12 Answering the allegations of paragraph 12 of the Complaint, these answering defendants
13 lack information or belief as to said allegations and on that basis, deny each and every, all and
14 singular, generally and specifically, said allegations.

15 Answering the allegations of paragraph 13 of the Complaint, these answering defendants
16 have insufficient information or belief to respond to the allegations and on that ground, deny
17 each and every, all and singular, generally and specifically, said allegations.

18 Answering the allegations of paragraph 14 of the Complaint, these answering defendants
19 deny each and every, all and singular, generally and specifically, said allegations.

20 Answering the allegations of paragraph 15 of the Complaint, these answering defendants
21 deny each and every, all and singular, generally and specifically, said allegations.

22 Answering the allegations of paragraph 16 of the Complaint, these answering defendants
23 admit the first and third sentences of the paragraph. Defendants admit, based on information or
24 belief, the second sentence.

25 Answering the allegations of paragraph 17 of the Complaint, these answering defendants
26 admit the first and last sentences in the paragraph. As to the remaining sentences in the
27 paragraph, these answering defendants have insufficient information or belief upon the subjects
28 to enable them to respond to the allegations, and basing their denial on that ground, deny each

1 and every, all and singular, generally and specifically, said allegations.

2 Answering the allegations of paragraph 18 of the Complaint, these answering defendants
3 admit that George Kennedy is the District Attorney in Santa Clara County and the last sentence
4 in the paragraph. Defendants admit that California Government Code §26521 provides: “The
5 district attorney shall defend all suits brought against the state in his or her county or against his
6 or her county wherever brought, and prosecute all recognizances forfeited in the courts of record
7 and, except as provided in Section 1305 and 1306 of the Penal Code, prosecute all actions for
8 the recovery of debts, fines, penalties, and forfeitures accruing to the state or his or her county.”
9 The wording in the first sentence is vague and ambiguous, and on that basis, basing their denial
10 on that ground, deny each and every, all and singular, generally and specifically, said allegations.

11 Answering the allegations of paragraph 19 of the Complaint, these answering defendants
12 have insufficient information or belief upon the subjects in the first two sentences to enable
13 them to respond to the allegations and, basing their denial on that ground, deny each and every,
14 all and singular, generally and specifically, said allegations. Defendants admit the remaining
15 allegations.

16 Answering the allegations of paragraph 20 of the Complaint, these answering defendants
17 admit that Ann Miller Ravel is the County Counsel for Santa Clara County. Defendants admit
18 the allegations in the last sentence of the paragraph. Defendants deny the remaining allegations
19 in the paragraph on the grounds that they are vague, ambiguous, incomplete, and/or inaccurate.

20 Answering the allegations of paragraph 21 of the Complaint, these answering defendants
21 deny, based on information or belief, each and every, all and singular, generally and specifically,
22 said allegations.

23 Answering the allegations of paragraph 22 of the Complaint, these answering defendants
24 deny based on information or belief, each and every, all and singular, generally and specifically,
25 said allegations.

26 Answering the allegations of paragraph 23 of the Complaint, these answering defendants
27 deny, based on information or belief, each and every, all and singular, generally and specifically,
28 said allegations.

1 Answering the allegations of paragraph 24 of the Complaint, these answering defendants
2 admit, based on information or belief, said allegations.

3 Answering the allegations of paragraph 25 of the Complaint, these answering defendants
4 contend that the allegations are vague and ambiguous and on that ground deny, each and every,
5 all and singular, generally and specifically, said allegations.

6 Answering the allegations of paragraph 26 of the Complaint, these answering defendants
7 contend that the allegations are vague, ambiguous, and overbroad, and on that ground deny, each
8 and every, all and singular, generally and specifically, said allegations.

9 Answering the allegations of paragraph 27 of the Complaint, these answering defendants,
10 admit said allegations, based on information and belief.

11 Answering the allegations of paragraph 28 of the Complaint, these answering defendants
12 deny each and every, all and singular, generally and specifically, said allegations.

13 Answering the allegations of paragraph 29 of the Complaint, defendants admit that the
14 provisions of the Act appear to be accurately presented. However, the introductory phrase (at
15 lines 11-12) is not accurate and on that ground, defendants deny each and every, all and singular,
16 generally and specifically, said allegations.

17 Answering the allegations of paragraph 30 of the Complaint, the paragraph appears to
18 accurately present parts of the Act and on that ground defendants admit, based on information
19 and belief, said allegations.

20 Answering the allegations of paragraph 31 of the Complaint, these answering defendants
21 dispute plaintiffs' characterization in the first sentence of this paragraph and thus deny each and
22 every, all and singular, generally and specifically, said allegations in the first sentence. The
23 definition of "minor" omits the word "natural." Plaintiffs' quotation of the definition of the
24 term "person" under the Act appears to be accurate, and on that ground, admits them based on
25 information and belief.

26 Answering the allegations of paragraph 32 of the Complaint, these answering defendants
27 respond that plaintiffs appear to accurately present part of the Act, and on that ground, admits
28 them based on information and belief.

1 Answering the allegations of paragraph 33 of the Complaint, these answering defendants
2 respond that plaintiffs do not accurately present part of the Act and on that ground deny each
3 and every, all and singular, generally and specifically, said allegations.

4 Answering the allegations of paragraph 34 of the Complaint, these answering defendants
5 respond that plaintiffs appear to accurately present parts of the Act; however, some of the
6 language used in the paragraph, particularly the last sentence, is vague and ambiguous. As a
7 result, these answering defendants deny each and every, all and singular, generally and
8 specifically, said allegations.

9 Answering the allegations of paragraph 35 of the Complaint, these answering defendants
10 respond that the allegations appear to accurately represent a portion of the Act, and on that
11 ground, defendant admit said allegations based on information and belief.

12 Answering the allegations of paragraph 36 of the Complaint, these answering defendants
13 respond that plaintiffs's presentation of the provision of the Act is not entirely accurate and on
14 that ground, deny each and every, all and singular, generally and specifically, said allegations.

15 Answering the allegations of paragraph 37 of the Complaint, these answering defendants
16 deny each and every, all and singular, generally and specifically, said allegations.

17 Answering the allegations of paragraph 38 of the Complaint, these answering defendants
18 deny each and every, all and singular, generally and specifically, said allegations.

19 Answering the allegations of paragraph 39 of the Complaint, these answering defendants
20 deny each and every, all and singular, generally and specifically, said allegations.

21 Answering the allegations of paragraph 40 of the Complaint, these answering defendants
22 deny each and every, all and singular, generally and specifically, said allegations.

23 Answering the allegations of paragraph 41 of the Complaint, these answering defendants
24 deny each and every, all and singular, generally and specifically, said allegations.

25 Answering the allegations of paragraph 42 of the Complaint, these answering defendants
26 deny each and every, all and singular, generally and specifically, said allegations.

27 Answering the allegations of paragraph 43 of the Complaint, these answering defendants
28 deny each and every, all and singular, generally and specifically, said allegations.

1 Answering the allegations of paragraph 44 of the Complaint, these answering defendants
2 deny each and every, all and singular, generally and specifically, said allegations.

3 Answering the allegations of paragraph 45 of the Complaint, these answering defendants
4 deny each and every all and singular, generally and specifically, said allegations. Answering
5 the allegations of paragraph 46 of the Complaint, these answering defendants respond that these
6 allegations are vague and ambiguous. As to other allegations, defendants have insufficient
7 information or belief upon the subjects to enable them to respond. Basing their denial on these
8 grounds, defendants deny each and every, all and singular, generally and specifically, said
9 allegations.

10 Answering the allegations of paragraph 47 of the Complaint, these answering defendants
11 respond that the allegations are so vague and speculative that defendants cannot respond.
12 Defendants deny each and every, all and singular, generally and specifically said allegations.

13 Answering the allegations of paragraph 48 of the Complaint, these answering defendants
14 deny each and every, all and singular, generally and specifically, said allegations.

15 Answering the allegations of paragraph 49 of the Complaint, these answering defendants
16 deny each and every, all and singular, generally and specifically, said allegations.

17 Answering the allegations of paragraph 50 of the Complaint, these answering defendants
18 respond that the allegations are so vague and/or they have insufficient information or belief upon
19 the subjects to enable them to respond. These defendants deny each and every, all and singular,
20 generally and specifically, said allegations.

21 Answering the allegations of paragraph 51 of the Complaint, these answering defendants
22 deny each and every, all and singular, generally and specifically, said allegations.

23 Answering the allegations of paragraph 52 of the Complaint, these answering defendants
24 deny each and every, all and singular, generally and specifically, said allegations.

25 Answering the allegations of paragraph 53 of the Complaint, these answering defendants
26 deny each and every, all and singular, generally and specifically, said allegations.

27 Answering the allegations of paragraph 54 of the Complaint, these answering defendants
28 deny each and every, all and singular, generally and specifically, said allegations.

1 Answering the allegations of paragraph 55 of the Complaint, these answering defendants
2 deny each and every, all and singular, generally and specifically, said allegations.

3 Answering the allegations of paragraph 56 of the Complaint, these answering defendants
4 deny each and every, all and singular, generally and specifically, said allegations.

5 Answering the allegations of paragraph 57 of the Complaint, these answering defendants
6 admit that the Act requires certain entities and/or individuals to label covered videos. As to the
7 remaining allegations, defendants deny each and every, all and singular, generally and
8 specifically, said allegations.

9 Answering the allegations of paragraph 58 of the Complaint, these answering defendants
10 deny each and every, all and singular, generally and specifically, said allegations.

11 Answering the allegations of paragraph 59 of the Complaint, these answering defendants
12 deny each and every, all and singular, generally and specifically, said allegations.

13 Answering the allegations of paragraph 60 of the Complaint, these answering defendants
14 deny each and every, all and singular, generally and specifically, said allegations.

15 Answering the allegations of paragraph 61 of the Complaint, these answering defendants
16 deny each and every, all and singular, generally and specifically, said allegations.

17 Answering the allegations of paragraph 62 of the Complaint, these answering defendants
18 deny each and every, all and singular, generally and specifically, said allegations.

19 Answering the allegations of paragraph 63 of the Complaint, these answering defendants
20 deny each and every, all and singular, generally and specifically, said allegations.

21 Answering the allegations of paragraph 64 of the Complaint, these answering defendants
22 have insufficient information or belief upon the subjects to enable them to respond to the
23 allegations, and basing their denial on that ground, deny each and every, all and singular,
24 generally and specifically, said allegations.

25 Answering the allegations of paragraph 65 of the Complaint, these answering defendants
26 deny each and every, all and singular, generally and specifically, said remaining allegations.

27 Answering the allegations of paragraph 66 of the Complaint, these answering defendants
28 deny each and every, all and singular, generally and specifically, said allegations.

1 Responding to the prayers for relief set forth, these defendants deny that plaintiffs are
2 entitled to any relief whatsoever, and further deny that plaintiffs have suffered any injury at all.

3 Wherefore, defendants pray for judgment in their favor as set forth below.

4 FIRST AFFIRMATIVE DEFENSE

5 As a separate, distinct and affirmative defense to the Complaint, and to each and every
6 cause of action contained therein, these answering defendants allege that neither the Complaint
7 nor any of its purported causes of action state facts sufficient to constitute a claim upon which
8 relief can be granted.

9 SECOND AFFIRMATIVE DEFENSE

10 As a separate, distinct and affirmative defense to the Complaint, and to each and every
11 cause of action contained therein, defendants deny that plaintiffs have been deprived of any
12 rights, privileges, or immunities guaranteed by the laws or Constitution of the United States or
13 by the laws or Constitution of the State of California.

14 THIRD AFFIRMATIVE DEFENSE

15 As a separate, distinct and affirmative defense to the Complaint, and to each and every
16 cause of action contained therein, these answering defendants allege that they did not actually
17 cause the injuries complained of by plaintiffs. As such, these answering defendants are not
18 liable for the injuries complained of herein.

19 FOURTH AFFIRMATIVE DEFENSE

20 As a separate, distinct and affirmative defense to the Complaint, and to each and every
21 cause of action contained therein, these answering defendants allege that there is no proximate
22 causation to link the injuries complained of by plaintiffs with any actions on the part of these
23 answering defendants, if any there may be, as alleged in the Complaint. As such, these
24 answering defendants are not liable for the injuries complained of.

25 FIFTH AFFIRMATIVE DEFENSE

26 As a separate, distinct and affirmative defense to the Complaint, and to each and every
27 cause of action contained therein, these answering defendants allege that any acts on the part of
28 these answering defendants (or County employees, if any there may be), are discretionary and

1 not ministerial in nature. As such, these answering defendants are not liable for the injuries
2 complained of herein.

3 SIXTH AFFIRMATIVE DEFENSE

4 As a separate, distinct and affirmative defense to the Complaint, and to each and every
5 cause of action contained therein, these answering defendants allege that plaintiffs' maintenance
6 of this action is frivolous and vexatious, and not brought with reasonable cause and in the good
7 faith belief that there is a justifiable controversy under the facts and law which warranted the
8 filing of the action, thus entitling defendants to an award of attorneys' fees and costs.

9 SEVENTH AFFIRMATIVE DEFENSE

10 As a separate, distinct and affirmative defense to the Complaint, and to each and every
11 cause of action contained therein, defendants allege that each and every cause of action
12 contained therein is barred for failure to allege a justiciable controversy.

13 EIGHTH AFFIRMATIVE DEFENSE

14 As a separate, distinct and affirmative defense to the Complaint, and to each and every
15 cause of action contained therein, these answering defendants allege that plaintiffs have failed to
16 mitigate any or all of the damages alleged in the Complaint and are thereby precluded from
17 recovering those damages that could have reasonably been avoided by the exercise of due care
18 on plaintiffs' part.

19 NINTH AFFIRMATIVE DEFENSE

20 As a separate, distinct and affirmative defense to the Complaint, and to each and every
21 cause of action contained therein, these answering defendants allege that each and every cause of
22 action of the Complaint is barred in that plaintiffs are estopped from recovering the amounts
23 claimed or any relief at all.

24 TENTH AFFIRMATIVE DEFENSE

25 As a separate, distinct and affirmative defense to the Complaint, and to each and every
26 cause of action contained therein, these answering defendants allege that each and every cause of
27 action in the Complaint is barred in that plaintiffs have waived any rights plaintiffs may have
28 had to the amounts claimed or any relief at all.

ELEVENTH AFFIRMATIVE DEFENSE

As a separate, distinct and affirmative defense to the Complaint, and to each and every cause of action contained therein, defendants allege that plaintiffs lack standing to maintain the present action or to obtain relief herein as to these answering defendants.

TWELFTH AFFIRMATIVE DEFENSE

As and for a separate and distinct affirmative defense to the Complaint, these answering defendants allege that the laws complained of are not unconstitutional on their face or as applied; nor are the laws complained of unconstitutionally vague.

THIRTEENTH AFFIRMATIVE DEFENSE

As a separate, distinct and affirmative defense to the Complaint, and to each and every cause of action contained therein, these answering defendants allege that plaintiffs are barred from obtaining injunctive relief or other equitable relief by reason of the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

As and for a separate and distinct affirmative defense to the Complaint, these answering defendants allege that any purported restrictions are constitutional and lawful.

FIFTEENTH AFFIRMATIVE DEFENSE

As and for a separate and distinct affirmative defense to the Complaint, these answering defendants allege that the claims are barred by immunities and privileges under federal and state law.

SIXTEENTH AFFIRMATIVE DEFENSE

As a separate, distinct and affirmative defense to the Complaint, and to each and every cause of action contained therein, defendants allege that plaintiffs have adequate remedies at law and are therefore not entitled to equitable relief herein on any cause of action alleged.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a separate, distinct and affirmative defense to the Complaint, and to each and every cause of action contained therein, defendants allege that the acts and omissions alleged herein have not caused and will not cause irreparable harm to plaintiffs herein.

EIGHTEENTH AFFIRMATIVE DEFENSE

____As and for a separate and distinct affirmative defense to the Complaint, these answering defendants allege that plaintiffs have failed to exhaust their administrative, judicial, and/or contractual remedies.

NINETEENTH AFFIRMATIVE DEFENSE

As a separate and affirmative defense to the Complaint and to each and every allegation therein, defendants allege that this action is barred due to the doctrine of res judicata and/or collateral estoppel.

TWENTIETH AFFIRMATIVE DEFENSE

As and for a separate and distinct affirmative defense to the Complaint, these answering defendants allege that plaintiffs have failed to state a claim upon which relief can be granted, including but not limited to the fact that plaintiffs' allegations do not constitute an exception to the abstention doctrine, which precludes granting the injunctive and declaratory relief sought by plaintiffs.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As and for a separate and distinct affirmative defense to the Complaint, these answering defendants allege that this Court has no jurisdiction over the subject of the cause of action alleged in plaintiffs' pleading against these answering defendants.

TWENTY-SECOND AFFIRMATIVE DEFENSE

As and for a separate and distinct affirmative defense to the Complaint, these answering defendants allege that the Complaint should be dismissed because defendants are immune and/or entitled to qualified immunity based on the applicable federal and state laws and case law.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As a separate, distinct and affirmative defense to the Complaint, and to each and every cause of action contained therein, these answering defendants allege that there is no case in controversy at this time.

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1 TWENTY-FOURTH AFFIRMATIVE DEFENSE

2 As and for a separate and distinct affirmative defense to the Complaint, these answering
3 defendants allege that plaintiffs have named incorrect and improper parties as defendants in this
4 suit.

5 TWENTY-FIFTH AFFIRMATIVE DEFENSE

6 As and for a separate and distinct affirmative defense to the Complaint, these answering
7 defendants allege that their conduct at all times material herein was privileged and/or justified
8 under applicable law.

9 TWENTY-SIXTH AFFIRMATIVE DEFENSE

10 As and for a separate and distinct affirmative defense to the Complaint, these answering
11 defendants allege that the Complaint fails to allege facts sufficient to state a claim for relief
12 under the Civil Rights or other federal statutes, nor does jurisdiction in this Court lie against
13 defendants.

14 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

15 ____As and for a separate and distinct affirmative defense to the Complaint, these answering
16 defendants allege that plaintiffs have alternative methods to express and/or communicate their
17 views.

18 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

19 ____As and for a separate and distinct affirmative defense to the Complaint, these answering
20 defendants allege that plaintiffs failed to mitigate their damages.

21 TWENTY-NINTH AFFIRMATIVE DEFENSE

22 As a separate, distinct and affirmative defense to the Complaint, these answering
23 defendants allege that each and every cause of action of the Complaint is barred as unripe.

24 WHEREFORE, defendants pray for judgment against plaintiffs as follows:

- 25 1. That plaintiffs take nothing by their Complaint;
26 2. That the Complaint be dismissed with prejudice;
27 3. That plaintiffs' requests for injunctive and declaratory relief be denied;
28 4. That all costs of suit, including attorneys' fees, be awarded to defendants;

1 5. That judgment be entered in favor of defendants; and

2 6. That the Court award such further relief as this Court may deem just and proper.

3 Dated: November 15, 2005

Respectfully submitted,

4 ANN MILLER RAVEL
County Counsel

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6 /S/

7 KATHRYN J. ZOGLIN
Deputy County Counsel

8 Attorneys for Defendants SANTA
9 CLARA COUNTY DISTRICT
10 ATTORNEY GEORGE KENNEDY
11 AND SANTA CLARA COUNTY
12 COUNSEL ANN MILLER RAVEL,
13 IN THEIR OFFICIAL CAPACITIES
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